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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**In re Penthouse Executive Club Compensation  
Litigation**

**Master File No. 10 Civ. 1145 (KMW)**

**DECLARATION OF LLOYD AMBINDER IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT,  
CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS,  
APPOINTMENT OF PLAINTIFFS' COUNSEL AS CLASS COUNSEL, AND  
APPROVAL OF PLAINTIFFS' PROPOSED NOTICES OF SETTLEMENT**

I, Lloyd Ambinder, declare as follows:

1. I am a partner in the firm of Virginia & Ambinder LLP (“Ambinder”) in New York, New York, and Plaintiffs’ counsel herein.

2. Along with lawyers from Outten & Golden LLP (“O&G”), Urban Justice Center Sex Workers Project (“UJC”), and Leeds Brown Law, PC (“Leeds Brown”) (together with Ambinder, “Plaintiffs’ Counsel”), I am one of the lawyers primarily responsible for prosecuting Plaintiffs’ claims on behalf of the proposed class.

3. I make these statements based on personal knowledge and would so testify if called as a witness at trial.

**My Background and Experience**

4. I am a graduate of SUNY Binghamton (BA), Columbia University (MA) and Brooklyn Law School (JD). I have been practicing as an attorney for over 22 years and have principally been engaged in litigation of wage and hour claims. I have been counsel or co-counsel for plaintiffs in hundreds of State and Federal class and collective action lawsuits (including this one) based on Federal and State wage-and hour law, including lawsuits in the Southern and Eastern Districts of New York and the State or Federal District Courts in New Jersey, West Virginia, Georgia, Florida and Ohio.

5. A sampling of recent cases where I have served as lead counsel or co-counsel include: Marcus, et al. v. AXA Advisors, LLC, et al. (EDNY 11-cv-2339) (Johnson, J.); McBeth, et al. v. Gabrelli Truck Sales Ltd., et al. (EDNY 09-cv-4112) (Wexler, J.); Garcia et al. v. The Executive Club (S.D.N.Y. 10-cv-1545) (Stein, J.); Lujan, et al. v Cabana Management, et al. (EDNY 10-cv-755) (Glasser, J.); Espinoza v. 953 Associates, LLC, (S.D.N.Y. 10-cv-5517) (Scheindlin, J.); Morris v. Alle Processing, Corp., (EDNY 08-cv-4874) (Townes, J.);

Nawrocki v. Crimson Construction, (EDNY 08-cv-3153) (Brodie, J.); Gonzalez v. Nicholas Zito Racing Stable, Inc., (EDNY 04-cv-0022) (Townes, J.); Guzman v. VLM, Inc., (EDNY 07-cv-1126) (Gleeson, J.).

### **The Penthouse Overtime Litigation**

6. On December 29, 2009, Virginia and Ambinder LLP and Leeds Brown Law PC,<sup>1</sup> filed a collective action overtime lawsuit in the United States District Court for the Southern District of New York on behalf of Plaintiffs Stephanie Carattini and Nicole Hughes, captioned *Carattini v. The Executive Club d/b/a/ Penthouse Executive Club, et al.*, No. 09 Civ. 101572 (“*Carattini*”).

7. On February 11, 2010, O&G and UJC filed a collective action overtime lawsuit in the United States District Court for the Southern District of New York on behalf of Plaintiff Leslie Liwanag, captioned *Liwanag v. The Executive Club d/b/a/ Penthouse Executive Club, et al.*, No. 10 Civ. 1145 (“*Liwanag*”).

8. On June 11, 2010, the District Court (Judge Naomi Buchwald presiding) ordered that the two cases be consolidated.

### **Investigation and Discovery**

9. Before initiating *Carattini*, Ambinder and Leeds Brown conducted a thorough investigation into the merits of the potential claims and defenses.

10. This included investigation and legal research on the underlying merits of the class claims, the likelihood of obtaining liquidated damages and an extended FLSA statute of limitations, the proper measure of damages, and the likelihood of class certification. We also

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<sup>1</sup> Jeffrey Brown, counsel for Plaintiff Carattini, is a former partner with the firm of Leeds, Morelli Brown, P.C. He is now a partner at Leeds Brown Law, PC, and the case moved with Mr. Brown to his new law firm.

researched Defendants' likely affirmative defenses,

11. After filing, Plaintiffs' Counsel conducted further investigation including, but not limited to, interviewing and obtaining declarations from Plaintiffs and Class Members, participating in party and non-party discovery, including the depositions of Plaintiffs and Defendants' representatives, and analyzing time, payroll and tip allocation records, tax documents and other financial records.

12. Plaintiffs' Counsel reviewed thousands of pages of documents produced by Defendants. All parties submitted and responded to discovery requests and interrogatories.

13. Plaintiffs' Counsel took a Fed. R. Civ. P. 30(b)(6) deposition of Defendant Yackow and the depositions of Defendants' managers April Bellantoni and Kelly Skillen. Defendants deposed the three named Plaintiffs and four opt-in Plaintiffs.

I declare under penalty of perjury, under 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 5th day of April, 2013  
New York, New York



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